BEFORE THE 1 POLLUTION CONTROL HEARINGS BOARD STATE OF WASHINGTON 2 IN THE MATTER OF 3 SCOTT PAPER COMPANY, 4 Appellant, 5 FINAL FINDINGS OF FACT, 6 CONCLUSIONS OF LAW PUGET SOUND AIR POLLUTION AND ORDER CONTROL AGENCY, 7 Respondent. 8 9

THIS MATTER being the appeal of 25 civil penalties issued by respondent for various violations, having been brought before the Pollution Control Hearings Board at a formal hearing by way of written briefs pursuant to the agreement of counsel; and appellant, Scott Paper Company, appearing through its attorney, William W. Baker, and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin, and the Board having read the briefs and the agreed facts as related by the appellant, and having entered on the 21st day of 18 April, 1975, its proposed Findings of Fact, Conclusions of Law and Order;

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and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and The Board having received exceptions to said proposed Findings, Conclusions and Order from respondent and having considered and denied same; and the Board being fully advised in the premises; now therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 21st day of April, 1975, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein. DONE at Lacey, Washington this Ond day of June, 1975. POLLUTION CONTROL HEARINGS BOARD 

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BEFORE THE 1 POLLUTION CONTROL HEARINGS BOARD STATE OF WASHINGTON 2 3 IN THE MATTER OF SCOTT PAPER COMPANY, 4 PCHB Nos. 670, 691, 717, Appellant, 733 and 774 5 v. FINDINGS OF FACT, 6 CONCLUSIONS OF LAW AND ORDER PUGET SOUND AIR POLLUTION 7 CONTROL AGENCY, Respondent. 8 9

This matter, the appeal of 25 civil penalties issued by respondent for various violations, was brought before the Pollution Control Hearings Board at a formal hearing by way of written briefs pursuant to the agreement of counsel.

Appellant was represented by its attorney, William W. Baker; respondent was represented by its attorney, Keith D. McGoffin.

Having read the briefs, having read the agreed facts as related by the appellant, and being fully advised, the Pollution Control Hearings 18 Board makes these

EXHIBIT A

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## FINDINGS OF FACT

I.

These appeals involve 25 civil penalties issued by the Puget Sound Air Pollution Control Agency (PSAPCA) for violations occuring from May 28, 1974, through October 23, 1974. The appeals from the various civil penalties have been consolidated by order of this Board.

II.

Appellant, Scott Paper Company (Scott), has a sulfite pulping mill located in Everett, Washington. The mill is located within the territorial area administered by the PSAPCA.

III.

The various Notices of Civil Penalty from which Scott now appeals state that, "pursuant to RCW 70.94 and Regulation I," appellant was in violation of a provision of Regulation I and in some cases, a provision of chapter 18-56 WAC.

IV.

Pursuant to the provisions of RCW 70.94.395, the Department of Ecology, following appropriate procedures, assumed state jurisdiction over emissions from sulfite pulping mills in order to provide for the systematic reduction and control of air pollution in the sulfite pulping industry. Regulations governing emissions into the ambient air by sulfite pulping mills were adopted simultaneously with the other regulations adopted by the Department of Ecology pursuant to provisions of chapter 70.94 RCW and filed on January 24, 1972 and February 2, 1972.

v.

Under Docket No. DE 74-749 and Docket No. DE 75-12, appellant was

27 FINDINGS OF FACT,

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penalized by the Department of Ecology for violating WAC 18-38-060(7), governing reporting of excess emission of SO<sub>2</sub>. Appellant received Notices of Civil Penalty from PSAPCA for the same dates, i.e.,

August 13, 1974 and October 23, 1974.

VI.

Prior to July 1, 1974, appellant was subject to a compliance schedule issued by the Department of Ecology pursuant to chapter 70.94 RCW. Since July 1, 1974, and through the period covered by the instant appeals, operation of appellant's acid plant has been pursuant to the provisions of Variance No. 38-3 issued by the Department of Ecology pursuant to RCW 70.94.181.

VII.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

VIII.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board makes these

## CONCLUSIONS OF LAW

I.

Pursuant to RCW 70.94.395, the state has, with certain exceptions not here relevant, assumed an otherwise exclusive jurisdiction to regulate the emissions from sulfite pulping mills. Chapter 18-38 WAC. Respondent does not claim that it has been delegated authority to regulate this source by

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the state in accordance with RCW 70.94.395. Notwithstanding its lack of jurisdiction to regulate the emissions 2 from said mill, respondent has attempted to indirectly regulate these 3 emissions of sulphur droxide when these emissions exceed specified 4 levels at an air monitoring station. Section 9.07(a), Regulation I. 5 conclude that respondent cannot do indirectly what it lacks jurisdiction 6 7 to do directly, i.e., regulate emissions from sulfite pulping mills 8 subject to state-wide control. 9 II. By adopting chapter 18-38 WAC, the state has properly assumed 10 exclusive jurisdiction over the sulfite pulping mills in accordance 11 12 with RCW 70.94.395. 13 III. 14 Any Finding of Fact which should be deemed a Conclusion of Law 15 is hereby adopted as such. 16 From these Conclusions, the Pollution Control Hearings Board enters 17 this 18 ORDER 19 The 25 civil penalties issued by the respondent in the above-20 consolidated cases are vacated. 21 22 23 24 25

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FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1	DONE at Lacey, Washington this 11st day of april , 1975
2	POLLUTION CONTROL HEARINGS BOARD
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4	CHRIS SMITH Chairman
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6	W. A. GISSBERG, Member
7	Walt Warden Or
8	WALT WOODWARD, Member
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27	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER 5

## CONCURRING OPINION:

As a lay member of this Board, I find that the briefs and agreed facts sustain the position of W. A. Gissberg, the lawyer member of this Board. His legal opinions have my respect and I, therefore, concur in this Order.

This Order, however, does not erase my concern for what may be a problem in the control of industrial air emissions in certain heavily urbanized areas of the state. Twice now--in this Everett matter, and earlier in a Tacoma hearing, PCHB Nos. 503 and 578--the Puget Sound Air Pollution Control Agency (PSAPCA) has suggested the presence of such a problem.

Although PSAPCA's contentions do not establish that there is a problem, from my four and one-half years of experience on this Board, I have come to respect PSAPCA's considerable expertise, enforcement equipment and personnel in the area of monitoring and controlling air emissions. I do not believe that PSAPCA would engage in frivolous enforcement attempts. From this belief, I am concerned when PSAPCA-twice now-has suggested to this Board that there is a problem in the control of industrial air emissions in certain heavily urbanized areas.

However, in both cases, this Board with my concurrence has ruled against PSAPCA.

The controlling statute in those decisions is RCW 70.94.395 which, in part, spells out exact procedures to be followed by a local air pollution control unit of government, such as PSAPCA, in seeking and obtaining the necessary authority to control the very problem suggested by PSAPCA in both the Everett and Tacoma matters.

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I am not aware that PSAPCA has ever availed itself of all the procedures in RCW 70.94.395.

Certainly, if PSAPCA wants the authority, it must follow those procedures. It is my gratuitous, respectful, but earnest, suggestion that it should do so.

WALT WOODWARD, Member

CHRIS SMITH, Chairman

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